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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,810	07/10/2001	Kevin R. Mc Intosh	19226US01	7470
23446 7590 06/11/2008 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER EWOLDT, GERALD R				
ART UNIT		PAPER NUMBER		
1644				
MAIL DATE		DELIVERY MODE		
06/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

09/807,810

## Applicant(s)

MC INTOSH ET AL.

## Examiner

G. R. Ewoldt, Ph.D.

## Art Unit

1644

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 2/2/06 and BPAI Decision of 2/21/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3, 6, 7, 10, 14, 15, 18, 20, 22, 23, 25, 29, 31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 3, 14, 15, 18, 23, 25, 29 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6, 7, 10 and 31 is/are rejected.
- 7) ☐ Claim(s) 20 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

#### DETAILED ACTION

1. In view of the Decision of the Board of Patent Appeals and Interferences mailed 2/21/08, Claims 1, 2, 4, 6, 8, 9, 11-13, 16, 17, 19, 21, 24, 26-28, 30, and 32 are canceled.

Claims 3, 14, 15, 18, 23, 25, 29, 31, and 33 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species.

Claims 6, 7, 10, 20, 22, and 31 are under examination.

2. Claims 6, 7, 10, 20, 22, and 31 are objected to as depending from canceled claims.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 6, 7, 10, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosi et al. (1997).

Bosi et al. teaches a method comprising administering to a patient a second allogeneic bone marrow transplant (see particularly **Patients and Methods**). As established previously, bone marrow comprises fibroblasts and a bone marrow transplant comprises administering "isolated" fibroblasts (see BPAI decision of 2/21/08, page 7). Given that fibroblasts are inherently immunosuppressive, and no threshold amount of "reduced immune response" or "treating" has been disclosed, the method meets the claim limitation of "inducing a reduced immune response" (Claim 1) or "treating a transplant recipient for graft versus host disease" (Claim 27). Regarding Claim 6, the fibroblasts of the first transplant are allogeneic to the fibroblasts of both the recipient and the fibroblasts of the second transplant (the "donor" of the claim). Regarding Claim 7, the fibroblasts of the first transplant are administered to the patient before the fibroblasts of the second transplant. Regarding Claim 10, the fibroblasts of the second transplant are administered to the patient after the fibroblasts of the first

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transplant. Regarding Claim 31, the fibroblasts of the first or second transplants are allogeneic to the fibroblasts of either the first or second transplants and the recipient (the "donor" of the claim).

Thus, the reference clearly teaches all of the limitations of the claims and anticipates the claimed invention.

5. No claim is allowed. The method of Claims 20 and 22 would be allowable if recited in independent form.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (571) 272-0843. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen O'Hara, Ph.D. can be reached on (571) 272-0878.

7. **Please Note:** Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197

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